

BEFORE THE
GOVERNING BOARD
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011030916

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Yucaipa, California on April 1, 2011.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Yucaipa-Calimesa Joint Unified School District.

Marianne Reinhold, Reich Adell & Cvitan, Attorneys at Law, represented the respondents listed in Appendix A., except for the respondent listed immediately below.

Respondent Misty Foy represented herself and was present throughout the hearing.

The matter was submitted on April 1, 2011.

FACTUAL FINDINGS

1. Melissa Moore, Assistant Superintendent, Human Resources of the Yucaipa-Calimesa Joint Unified School District, made and filed the accusation dated February 28, 2011, in her official capacity as the designee of Dr. Sherry Kendrick, District Superintendent.
2. Respondents¹ are certificated district employees.

¹ The district initially identified 21 certificated employees as respondents designated for layoff. One of these individuals, Anthony Bennett, did not timely request a hearing or notice of defense. At the hearing, the district dismissed the accusation against another individual, Kurt Meidinger. Accordingly, by the conclusion of the hearing, there remained 19 respondents; they are listed in Appendix A.

3. On February 22, 2011, in accordance with Education Code sections 44949 and 44955, the superintendent notified the Board of Education of the Yucaipa-Calimesa Joint Unified School District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On February 23, 2011, the board adopted Resolution No. R-17/2010-2011, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Teachers	32
Reading Specialist	2
Special Education Teachers – Mild/Moderate	2
Physical Education Teachers	3
Teacher on Assignment – YCEA President	1
Middle School Counselor	.50
Independent Study Teacher	1
Biology Teacher	1
Middle School Science Teacher	1
Middle School Math/Science (Core) Teacher	2
Middle School English Teacher	1
Middle School ELL Immersion Teacher	.60

The proposed reductions totaled 47.10 FTE positions.

5. The board further determined in Resolution No. R-17/2010-2011 that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include: (1) possession of a valid credential and Highly Qualified status under NCLB in the relevant subject matter area(s); (2) an appropriate EL authorization if required by the position; (3) to bump a single subject credential holder in a secondary assignment, an appropriate single subject credential; and (4) for specialty positions such as Counseling, School Psychologist, Community Day School, Advanced Placement, and secondary Designated Dual Assignment, at least one (1) complete year of District experience in the same assignment within the last five (5) years.”

6. The board directed the superintendent or her designee to determine which employees’ services would not be required for the 2011-2012 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or her designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 15, 2011, the district timely served on respondents a written notice that the superintendent had recommended that their services would not be required for the upcoming school year, along with the related accusation. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

8. Respondents timely filed written requests for hearing and notices of defense. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the district.

10. The services the board addressed in Resolution No. R-17/2010-2011 were “particular kinds of services” that could be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

11. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

12. The board considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

13. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Pursuant to section 44995, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra.* at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the Board be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2011, that their services are no longer required by the district.

//

//

ADVISORY DETERMINATION

The following advisory determination is made:

1. The accusations served on respondents are sustained. Notice may be given to respondents before May 15, 2011, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: April 18, 2011

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Gina Aten
2. Michelle Benware
3. Tara Bickford (0.5 FTE)
4. Melinda Blanton-Crites
5. Scott Colin
6. Tamie Fawcett
7. Misty Foy
8. Julie Lattuca
9. Esther Lehr (0.5 FTE)
10. Chjristine McLaughlin
11. Kathleen Miller
12. Krestin Mullen (0.5 FTE)
13. Vickie Nelson
14. Carrie Powell
15. Juliana Sauvao (0.5 FTE)
16. Michelle Spencer (0.5 FTE)
17. Amanda Stockham (0.5 FTE)
18. Antoinette Velardes
19. Sherry Young

Respondents Lehr, Mullen, Sauvao, Spencer, and Stockham are employed in 0.50 FTE positions for the current school year. Accordingly, the lay-off of their 0.5 FTE positions will result in the termination of their entire employment with the district. Respondent Bickford has a 1.0 FTE position for the current school year. Accordingly, her 0.5 FTE lay off will not result in the termination of her entire employment with the district; instead, she will remain employed in a 0.5 FTE position.